

**BEFORE THE
RESPIRATORY CARE BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

DON CARLO M. TRINIDAD
171 Regent Drive
Pittsburg, CA 94565

Case No.: R-2133

OAH No.: 2008010158

DECISION AND ORDER

The attached proposed Decision of the Administrative Law Judge is hereby adopted by the Respiratory Care Board of California, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on April 4, 2008.

It is so ORDERED March 27, 2008.

Original signed by:

LARRY L. RENNER, BS, RRT, RCP, RPFT
PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DON CARLO M. TRINIDAD
Pittsburg, California

Respiratory Care Practitioner
License No. 25143

Respondent.

Case No. R-2133

OAH No. 2008010158

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on February 19, 2008.

Catherine E. Santillan, Senior Legal Analyst, Attorney General's Office, represented Complainant Stephanie Nunez, Executive Officer, Respiratory Care Board of California (Board).

Respondent Don Carlo M. Trinidad represented himself.

The record closed on February 19, 2008.

FACTUAL FINDINGS

1. Complainant Stephanie Nunez filed the Accusation in her official capacity as Executive Officer of the Respiratory Care Board of the California Department of Consumer Affairs (Board).

2. On May 3, 2006, the Board issued License No. 25143 to Don Carlo M. Trinidad (Respondent). It is currently scheduled to expire on May 31, 2009.

3. On November 16, 2007, the Board filed a Petition against Respondent for an Interim Order of Suspension pursuant to Business and Professions Code section 494. Respondent stipulated to the proposed suspension. On November 20, 2007, Administrative

Law Judge Michael C. Cohn issued an Order suspending Respondent's license pending the filing of an accusation, a hearing and a final decision.¹ This hearing followed.

Events of September 8, 9 and 13, 2007

4. On September 8, 9, and 13, Respondent was employed as a respiratory care practitioner on a contract basis at Alameda County Medical Center (ACMC) in Oakland. On each of these dates staff observed Respondent enter different patient rooms holding a needle and a syringe. On one occasion, when a nurse entered one of the rooms, she observed Respondent use the needle and syringe to withdraw liquid from an intravenous (IV) bag that was connected to a patient. The IV bag contained Fentanyl, a controlled substance.²

5. The nurse reported what she had seen to Rosemary Williams, the respiratory care manager. Other personnel reported similar concerns regarding Respondent to Williams.

On September 13, 2007, Williams met with Respondent to discuss the allegations. Respondent first denied but later admitted that he had stolen medication from patients and that he had a drug abuse problem. Williams terminated Respondent's employment at ACMC and informed the Board of Respondent's actions.

6. Respondent admitted to Board representatives that he has taken patient medications while working as a respiratory care practitioner. He also signed a statement that contains the following admission: "I admit to the allegation of taking Fentanyl via a syringe on a couple of occasions. I also admit to having had an addiction which started after being placed on strong narcotics as a result of a surgery that took place [in] May 2007."

Respondent's Evidence

7. Rosemary Williams testified that she had evaluated Respondent's performance and that in her opinion he had excellent clinical skills and was a very good care provider. Respondent "went out of his way to help his coworkers" and is very knowledgeable.

8. In May 2007 Respondent underwent surgery for a hernia repair and suffered complications. This led to the prescription of pain medications. Respondent stated that he took both Percocet and Vicodin and became dependent upon narcotics as a result.

¹ The Stipulation to an Order of Suspension and Order is incorporated by this reference as if fully set forth.

² Fentanyl citrate is a potent narcotic analgesic. It is a dangerous drug pursuant to Business and Professions Code section 4022 and a controlled substance pursuant to Health and Safety Code section 11055, subdivision (c)(8).

9. Respondent testified that he did not attend the hearing to defend his actions. He acknowledges wrongdoing and believes he has worked very hard since the incident to “get my personal life and career in order.” Respondent sought help for his addiction problem from his family, through an out-patient rehabilitation program and by attending Narcotics Anonymous meetings.

Respondent is uninsured and therefore sought a low-cost treatment program. At the time of the incident he was living in the Daly City area. He found a program in Pacifica called the Pyramids Alternatives Program. Respondent paid \$75 to start the program and completed an intake assessment and one counseling session. But financial problems required him to move in with his parents in Pittsburg. It was therefore impractical to continue with a program in Pacifica. Respondent located an NA meeting closer to home and attends meetings on Tuesday, Thursday and either Saturday or Sunday. He submitted letters from two individuals who verify that they have seen him attending regularly.

In addition, Respondent concentrated his efforts on creating a very healthy lifestyle. First, he obtained herbal medicines and acupuncture to “detox.” He then joined a gym and works out three to four times each week. He also takes yoga classes and trains as an amateur Thai boxer.

10. Respondent submitted two letters of reference, both from respiratory care therapists.

a. Joyce Sudds worked at ACMC with Respondent for about two years. At first, she had a hard time believing what Respondent did. She knows that it was out of character for him and that he is very remorseful.

b. Michael Ong also worked with Respondent at ACMC. Ong is the lead therapist on the day shift. He was shocked to learn of Respondent’s actions and also wrote that it was out of character for Respondent and that Respondent is very remorseful.

Cost Recovery

11. A Certification of Costs was submitted to document charges of the Office of the Attorney General to the Board for representation in Respondent's matter. Catherine Santillan declared that she spent the following hours and would be billing as follows for her work representing Complainant:

<u>Fiscal Year</u>	<u>No. of Hours</u>	<u>Hourly Rate</u>	<u>Total Charges</u>
2007-2008	50.00	101.00	\$5,050.00

LEGAL CONCLUSIONS

1. Cause for license discipline exists pursuant to Business and Professions Code section 3750.5, subdivisions (a) and (b) (possession and use of a controlled substance), by reason of the matters set forth in Findings 4 through 6.
2. Cause for license discipline exists pursuant to Business and Professions Code section 3750, subdivision (j) (dishonest act), by reason of the matters set forth in Findings 4 through 6.
3. Cause for license discipline exists pursuant to Business and Professions Code section 3755 (unprofessional conduct) by reason of the matters set forth in Findings 4 through 6.
4. Cause exists pursuant to Business and Professions Code section 3753.5 to order Respondent to pay \$5,050 for the costs of investigation and prosecution by reason of the matters set forth in Finding 11.
5. The lives of vulnerable patients can be put at serious risk if treated by impaired respiratory therapists. Consequently, substance abuse is a matter of grave concern. Respondent not only suffered from an addiction, he stole medication from patients to satisfy that addiction. The risk presented by Respondent's practice is therefore compounded.

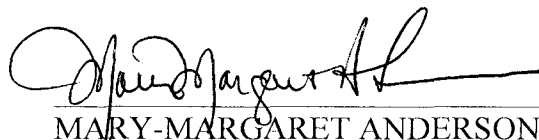
The question to be addressed concerns the level of risk Respondent presents to the public at this point in time. Respondent has admitted his problem and sought some help. He has not, however, completed a formal program that addresses addiction, choosing to tackle the issue more or less on his own. In addition, Respondent did not specifically address the honesty issue raised by his theft of drugs. The burden of persuasion is with Respondent and it is concluded that he has not met the burden. It is therefore concluded that it is not in the public interest for Respondent to practice as a respiratory care therapist, even on a probationary basis, at this time.

ORDER

1. Respiratory Care Practitioner license number 25143 issued to Respondent Don Carlo M. Trinidad is revoked.

2. Respondent is ordered to pay \$5,050 to the Board for the costs of investigation and prosecution.

DATED: March 4, 2008

A handwritten signature in black ink, appearing to read "Mary-Margaret Anderson", written over a horizontal line.

MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

